

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Paul Simmons,

Case No. 2:12-13848

Petitioner

v.

**ORDER**

O'Bell Winn, Warden,

Respondent

Telephonic status/scheduling conference held March 12, 2019.

It is hereby

**ORDERED THAT:**

1. Clerk of court to note the appearance of David A. Porter, Esq., of the Michigan Attorney General's Offices, as co-counsel for the respondent.
2. Discovery cut-off date set for May 31, 2019.
3. Evidentiary hearing on actual innocence claim set for June 24, 2019 at 9:00 a.m. and to continue, if necessary, on June 25, 2019. The hearing will take place at the federal courthouse in Detroit, Michigan.
4. Pre-hearing motions due May 31, 2019; oppositions due June 10, 2019.
5. Parties to exchange witness lists by June 10, 2019.
6. Respondent's counsel to undertake diligent efforts to have the petitioner transported to a suitable facility in or proximate to the City of Detroit well in

advance of the hearing, so as to enable the petitioner's counsel to meet and confer with his client in preparation for the hearing.

7. The petitioner has alleged that his trial counsel was ineffective for failing to investigate an alibi defense based on testimony from his family members and the petitioner's claim that someone else was responsible for the murder of Elmon Bostic. Based on these allegations, and in accordance with *In re Lott*, 424 F.3d 446 (6th Cir. 2005), the court hereby finds that the petitioner has waived the attorney-client privilege insofar as it relates to the subject matter of the petitioner's claim of trial counsel ineffectiveness.
8. The status conference set for March 26, 2019 be, and the same hereby is, vacated.
9. Telephonic pretrial conference set for June 3, 2019 at 9:00 a.m. The court will initiate the call to the numbers listed on the docket unless alternate contact information is provided to [judecarr\\_chambers@ohnd.uscourts.gov](mailto:judecarr_chambers@ohnd.uscourts.gov) before the date of the conference.
10. Parties shall file a status report or reports by May 27, 2019.

So ordered.

/s/ James G. Carr  
Sr. U.S. District Judge<sup>1</sup>

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<sup>1</sup> Of the United States District Court for the Northern District of Ohio, sitting by designation.